

# EXPOSURE DRAFT

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Inserts for  
**Financial Sector Reform (Hayne Royal  
Commission Response—Protecting  
Consumers (2020 Measures)) Bill 2020:  
claims handling**

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Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Schedule [x]	1 July 2020.	1 July 2020

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## Schedule [x]—Claims handling and settling

### *Corporations Act 2001*

#### 1 Section 9

Insert:

*claims handling and settling service*, when used in a provision outside Chapter 7, has the same meaning as in Chapter 7.

#### 2 Section 9 (at the end of paragraph (a) of the definition of *professional investor*)

Add “whose Australian financial services licence covers the provision of financial services that are not limited to claims handling and settling services”.

#### 3 Section 761A (paragraph (b) of the definition of *binder*)

Repeal the paragraph, substitute:

(b) provide a claims handling and settling service, on behalf of the insurer as insurer, in relation to risk insurance products;

#### 4 Section 761A

Insert:

*claims handling and settling service* has the meaning given by section 766G.

*insurance claims manager* means a person who carries on a business of providing claims handling and settling services on behalf of one or more insurers.

*insurance fulfilment provider* means a person who carries on a business of providing goods or services to persons insured under insurance products in satisfaction of the liability of the insurers under those products.

*loss assessor* means a person who carries on a business of doing either or both of the following on behalf of one or more insurers:

- (a) investigating the validity of claims under insurance products;
- (b) assessing the extent of insurers’ liability under insurance products under which claims are made.

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1 *Statement of Claim Settlement Options* means a Statement of  
2 Claim Settlement Options required by section 948C to be given in  
3 accordance with Division 3A of Part 7.7.

## 4 **5 After paragraph 766A(1)(ea)**

5 Insert:

6 (eb) provide a claims handling and settling service (see  
7 section 766G); or

## 8 **6 After subsection 766B(7)**

9 Insert:

10 (7A) A recommendation or statement of opinion, or a report of either of  
11 those things, is not financial product advice if giving the  
12 recommendation, statement of opinion or report could reasonably  
13 be regarded as a necessary part of providing a claims handling and  
14 settling service.

15 (7B) The regulations may prescribe:

16 (a) circumstances in which giving a recommendation, statement  
17 of opinion or report could reasonably be regarded as a  
18 necessary part of providing a claims handling and settling  
19 service for the purposes of subsection (7A); and

20 (b) circumstances in which giving a recommendation, statement  
21 of opinion or report could not reasonably be regarded as a  
22 necessary part of providing a claims handling and settling  
23 service for the purposes of subsection (7A).

## 24 **7 Subsection 766B(8)**

25 Omit “and (7)”, substitute “, (7) and (7A)”.

## 26 **8 At the end of Division 4 of Part 7.1**

27 Add:

## 28 **766G Meaning of *claims handling and settling service***

29 (1) A person provides a *claims handling and settling service* if:

30 (a) the person makes a recommendation, or states an opinion, in  
31 the following circumstances:

32 (i) the recommendation, or statement of opinion, is made in  
33 response to an inquiry by or on behalf of another person

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- 1 about a potential claim by the other person under an  
2 insurance product;
- 3 (ii) the recommendation, or statement of opinion, could  
4 reasonably be expected to influence a decision whether  
5 to make the claim; or
- 6 (b) the person assists another person to make a claim under an  
7 insurance product; or
- 8 (c) the person assesses whether an insurer has a liability under an  
9 insurance product, or provides assistance in relation to such  
10 an assessment; or
- 11 (d) the person makes a decision to accept or reject all or part of a  
12 claim under an insurance product; or
- 13 (e) the person quantifies the extent of the insurer's liability to  
14 another person under an insurance product, or provides  
15 assistance in relation to the quantification of the extent of  
16 such a liability; or
- 17 (f) the person offers to settle all or part of a claim under an  
18 insurance product; or
- 19 (g) the person satisfies a liability of the insurer under an  
20 insurance product in full or partial settlement of a claim  
21 under the insurance product.
- 22 (2) Each of the following is not a *claims handling and settling*  
23 *service*:
- 24 (a) any advice given by a lawyer, in a professional capacity as a  
25 lawyer, about matters of law, legal interpretation or the  
26 application of the law to any facts;
- 27 (b) except as prescribed by the regulations—any other advice  
28 given by a lawyer in the ordinary course of activities as a  
29 lawyer, that is reasonably regarded as a necessary part of  
30 those activities;
- 31 (c) any action taken by a lawyer to determine whether an insurer  
32 is liable to another person under an insurance product, or to  
33 quantify the extent of the insurer's liability;
- 34 (d) any negotiation by a lawyer of the settlement of a claim  
35 under an insurance product;
- 36 (e) any conduct by a lawyer on behalf of another person that  
37 would, but for this paragraph, constitute dealing in a financial  
38 product, provided that:
- 39 (i) the lawyer is acting on instructions in a professional  
40 capacity as a lawyer; and
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- 1 (ii) the conduct can reasonably be regarded as a necessary  
2 part of acting on those instructions in a professional  
3 capacity as a lawyer; and  
4 (iii) the lawyer has not received and is not entitled to receive  
5 a benefit in relation to the conduct, other than the  
6 payment of professional charges, the reimbursement for  
7 expenses incurred on behalf of the other person, or the  
8 payment on account of expenses to be incurred on  
9 behalf of the other person.
- 10 (3) For the purposes of this Act, a claims handling and settling service  
11 provided in relation to an insurance product is to be treated as  
12 having been provided to the insured under the insurance product  
13 (who may be a person insured as a third party beneficiary under the  
14 insurance contract that constitutes the insurance product, within the  
15 meaning of the *Insurance Contracts Act 1984*).

## 9 After paragraph 911A(2)(ej)

16  
17 Insert:

- 18 (ek) the service is the provision of a claims handling and settling  
19 service in relation to an insurance product, and the person  
20 providing the service is not one of the following:  
21 (i) the insurer under the insurance product;  
22 (ii) a loss assessor;  
23 (iii) an insurance fulfilment provider who has authority from  
24 the insurer to reject all or part of a claim under the  
25 insurance product;  
26 (iv) an insurance claims manager;  
27 (v) an insurance broker (within the meaning of the  
28 *Insurance Contracts Act 1984*) who provides the claims  
29 handling and settling service in relation to the insurance  
30 product on behalf of the insurer;  
31 (vi) a person who has provided, or has entered into an  
32 arrangement to provide, financial product advice to a  
33 person insured under the insurance product (including a  
34 person insured as a third party beneficiary under the  
35 insurance contract that constitutes the insurance  
36 product, within the meaning of the *Insurance Contracts  
37 Act 1984*) and who also provides the claims handling  
38 and settling service on behalf of the insurer under the  
39 insurance product;

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- 1 (e) the service is the provision of a claims handling and settling  
2 service in relation to an insurance product and all of the  
3 following apply:
- 4 (i) the claims handling and settling service is provided  
5 under an arrangement between the issuer of the  
6 insurance product and a financial services licensee;
  - 7 (ii) under the arrangement, the financial services licensee,  
8 or their authorised representatives, may provide the  
9 claims handling and settling service in relation to the  
10 insurance product;
  - 11 (iii) the provision of the claims handling and settling service  
12 is covered by the financial services licensee's Australian  
13 financial services licence;
  - 14 (iv) the claims handling and settling service is provided to  
15 the insured as a retail client;
- 16 (em) the service is the provision of a claims handling and settling  
17 service in relation to an insurance product provided to a  
18 wholesale client under an arrangement between the issuer of  
19 the insurance product and a financial services licensee;

## 20 **10 Subsection 940C(1)**

21 Omit “or a Statement of Advice”, substitute “, a Statement of Advice or  
22 a Statement of Claim Settlement Options”.

## 23 **11 After subsection 941C(7)**

24 Insert:

25 *Claims handling and settling service*

26 (7A) The providing entity does not have to give the client a Financial  
27 Services Guide if the financial service consists only of a claims  
28 handling and settling service.

## 29 **12 After Division 3 of Part 7.7**

30 Insert:

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## 1 Division 3A—Statement of Claim Settlement Options

### 2 Subdivision A—When this Division applies

#### 3 948B Situation in which this Division applies

4 This Division applies in relation to the provision of a claims  
5 handling and settling service in the following circumstances:

- 6 (a) the service is offering to settle all or part of a claim under a  
7 general insurance product using a cash payment;
- 8 (b) the service is provided:
- 9 (i) by a financial services licensee (the *providing entity*); or  
10 (ii) by a person (the *providing entity*) in their capacity as  
11 authorised representative of a financial services licensee  
12 (the *authorising licensee*), or of 2 or more financial  
13 services licensees (the *authorising licensees*);
- 14 (c) the service is provided to a person (the *client*) as a retail  
15 client.

### 16 Subdivision B—Requirement for a Statement of Claim 17 Settlement Options to be given

#### 18 948C Obligation to give client a Statement of Claim Settlement 19 Options

- 20 (1) The providing entity must give the client a Statement of Claim  
21 Settlement Options in accordance with this Division.
- 22 (2) A person contravenes this subsection if the person contravenes  
23 subsection (1).

24 Note: This subsection is a civil penalty provision (see section 1317E).

#### 25 948D Timing for giving a Statement of Claim Settlement Options

26 The Statement of Claim Settlement Options must be given to the  
27 client when the offer to settle all or part of the claim using a cash  
28 payment is made.

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## Subdivision C—Contents of a Statement of Claim Settlement Options

### 948E Title of Statement of Claim Settlement Options

- (1) The title “Statement of Claim Settlement Options” must be used on the cover, or at or near the front of, a Statement of Claim Settlement Options.
- (2) In any other part of the Statement of Claim Settlement Options, “Statement of Claim Settlement Options” may be abbreviated to “SCSO”.

### 948F Content of Statement of Claim Settlement Options

- (1) A Statement of Claim Settlement Options must contain:
  - (a) a statement outlining the options for settlement legally available under the insurance product; and
  - (b) a statement setting out the amount of the cash settlement being offered and the sum insured under the insurance product; and
  - (c) a statement that the client should obtain independent financial advice before settling; and
  - (d) any other information prescribed by the regulations.
- (2) The Statement of Claim Settlement Options must be given in writing.
- (3) The Statement of Claim Settlement Options must be dated. The date must be the date on which the Statement of Claim Settlement Options was prepared or its preparation completed.
- (4) The Statement of Claim Settlement Options may also contain other information.
- (5) The information included in the Statement of Claim Settlement Options must be worded and presented in a clear, concise and effective manner.

### 13 Paragraph 951A(b)

After “Statement of Advice”, insert “, Statement of Claim Settlement Options”.



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1 **14 Subsection 952B(1) (paragraph (b) of the definition of**  
2 ***defective*)**

3 Omit “a Statement of Advice, or is”, substitute “a Statement of Advice,  
4 a Statement of Claim Settlement Options, or”.

5 **15 Subsection 952B(1) (after subparagraph (b)(ii) of the**  
6 **definition of *defective*)**

7 Insert:

- 8 (iia) if it is a Statement of Claim Settlement Options—there  
9 is an omission from the Statement of Claim Settlement  
10 Options of material required by section 948F; or

11 **16 Subsection 952B(1) (after paragraph (c) of the definition of**  
12 ***disclosure document or statement*)**

13 Insert:

- 14 (ca) a Statement of Claim Settlement Options; or

15 **17 Paragraph 952E(2)(a)**

16 Repeal the paragraph, substitute:

- 17 (a) the representative gives (see subsection (5)) a person a  
18 disclosure document or statement that is one of the following,  
19 in circumstances in which the document or statement is  
20 required by a provision of this Part to be given to the person:  
21 (i) a Statement of Advice;  
22 (ii) a Statement of Claim Settlement Options;  
23 (iii) information, a statement or a copy of a record required  
24 by subsection 941C(5) or (7), 941D(2), 946AA(5),  
25 946B(3), (6) or (8) or 946C(2); and

26 **18 Paragraph 952F(1)(b)**

27 Repeal the paragraph, substitute:

- 28 (b) the licensee provides the representative with a disclosure  
29 document or statement, being:  
30 (i) a Statement of Advice; or  
31 (ii) a Statement of Claim Settlement Options; or  
32 (iii) information, a statement or a copy of a record required  
33 by subsection 941C(5) or (7), 941D(2), 946AA(5),  
34 946B(3), (6) or (8) or 946C(2); or

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## 19 Subparagraph 952F(1)(c)(i)

After “a Statement of Advice,”, insert “a Statement of Claim Settlement Options,”.

## 20 Paragraph 952G(1)(b)

Repeal the paragraph, substitute:

- (b) the licensee provides the representative with a disclosure document or statement, being:
  - (i) a Statement of Advice; or
  - (ii) a Statement of Claim Settlement Options; or
  - (iii) information, a statement or a copy of a record required by subsection 941C(5) or (7), 941D(2), 946AA(5), 946B(3), (6) or (8) or 946C(2); or

## 21 Subparagraph 952G(1)(c)(i)

After “a Statement of Advice,”, insert “a Statement of Claim Settlement Options,”.

## 22 After section 952J

Insert:

### 952JA Offence if a Statement of Claim Settlement Options does not comply with certain requirements

- (1) A financial services licensee, or an authorised representative of a financial services licensee, commits an offence if:
    - (a) the licensee or representative gives (see subsection (3)) a person a Statement of Claim Settlement Options in circumstances in which it is required by a provision of this Part to be given to the person; and
    - (b) the Statement of Claim Settlement Options does not comply with section 948E.
- Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).
- (2) For the purposes of an offence based on subsection (1), strict liability applies to paragraph (b) of that subsection.
  - (3) In this section, *give* means give by any means (including orally), and is not limited to the meaning it has because of section 940C.

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1 **23 Subsection 953A(1) (paragraph (b) of the definition of**  
2 ***defective*)**

3 Omit “a Statement of Advice, or is”, substitute “a Statement of Advice,  
4 a Statement of Claim Settlement Options, or”.

5 **24 Subsection 953A(1) (after subparagraph (b)(ii) of the**  
6 **definition of *defective*)**

7 Insert:

8 (ia) if it is a Statement of Claim Settlement Options—there  
9 is an omission from the Statement of Claim Settlement  
10 Options of material required by section 948F; or

11 **25 Subsection 953A(1) (after paragraph (c) of the definition of**  
12 ***disclosure document or statement*)**

13 Insert:

14 (ca) a Statement of Claim Settlement Options; or

15 **26 In the appropriate position in subsection 1317E(3)**

16 Insert:

17 subsection 948C(2) obligation to give client a Statement of Claim Settlement Options unclassified

18 **27 In the appropriate position in Schedule 3**

19 Insert:

subsection 952JA(1) 30 penalty units

20 **28 In the appropriate position in Chapter 10**

21 Insert:

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## Part 10.41—Application and transitional provisions relating to Schedule [x] to the Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2020 Measures)) Act 2020

### 1668 Application of claims handling and settling services reforms

Subject to this Part, the amendments made by Schedule [x] to the *Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2020 Measures)) Act 2020* apply to claims or potential claims under insurance products made on or after 1 July 2020.

### 1669 Transition periods

- (1) For the purposes of this Part, the *transition period* for a person begins on 1 July 2020 and ends on:
  - (a) if, on or before 31 December 2020, the person lodges an application for an Australian financial services licence covering claims handling and settling services, the application complies with section 913A and is pending on that day—the earlier of:
    - (i) if, after 31 December 2020, the person withdraws the application—the day on which the application is withdrawn; and
    - (ii) if, after 31 December 2020, ASIC notifies the person in writing that ASIC refuses to receive the application under subsection 1274(8)—the day on which ASIC gives that notification; and
    - (iii) if ASIC refuses to grant the person an Australian financial services licence covering claims handling and settling services—the day on which ASIC gives the person notice in writing of the refusal; and
    - (iv) 30 June 2021; or
  - (b) if the person is a financial services licensee and, on or before 31 December 2020, lodges an application for ASIC to vary the conditions on the licence to specify that claims handling and settling services are financial services that the licensee is

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1 authorised to provide, the application complies with  
2 paragraph 914A(2)(b) and is pending on that day—the earlier  
3 of:

- 4 (i) if, after 31 December 2020, the person withdraws the  
5 application—the day on which the application is  
6 withdrawn; and  
7 (ii) if, after 31 December 2020, ASIC notifies the person in  
8 writing that ASIC refuses to receive the application  
9 under subsection 1274(8)—the day on which ASIC  
10 gives that notification; and  
11 (iii) if ASIC refuses to grant the person the variation—the  
12 day on which ASIC gives the person notice in writing of  
13 the refusal; and  
14 (iv) 30 June 2021; or  
15 (c) if a statement that the person will be authorised to provide  
16 claims handling and settling services on behalf of another  
17 person (the *licensee applicant*) is included in one or more  
18 applications mentioned in paragraph (a) or (b)—the earlier  
19 of:  
20 (i) the day on which the longest transition period for any of  
21 the licensee applicants under those applications ends;  
22 and  
23 (ii) 30 June 2021; or  
24 (d) otherwise—31 December 2020.

- 25 (2) In this section, an application is *pending* on a particular day if:  
26 (a) the application has not been withdrawn by the applicant on or  
27 before that day; and  
28 (b) ASIC has not, on or before that day, given the applicant  
29 notice in writing that the application has been granted or  
30 refused; and  
31 (c) ASIC has not, on or before that day, notified that applicant in  
32 writing that ASIC refuses to receive the application under  
33 subsection 1274(8).

## 34 **1670 Sections 911A and 911B do not apply to a person during the** 35 **transition period for the person**

- 36 (1) Despite section 911A, a person who carries on a financial services  
37 business in this jurisdiction is exempt from the requirement to hold

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- 1 an Australian financial services licence during the transition period  
2 for that person covering:
- 3 (a) the provision of a claims handling and settling service; or
  - 4 (b) giving advice that consists only of a recommendation or  
5 statement of opinion provided in the course of, and as a  
6 necessary or incidental part of, either or both of:
    - 7 (i) the handling of claims or potential claims in relation to  
8 an insurance product; and
    - 9 (ii) the settlement of claims or potential claims in relation to  
10 an insurance product; or
  - 11 (c) dealing in an insurance product, to the extent that the dealing  
12 is a necessary or incidental part of either or both of:
    - 13 (i) the handling of claims or potential claims in relation to  
14 that product; and
    - 15 (ii) the settlement of claims or potential claims in relation to  
16 that product.
- 17 (2) During the transition period for a person, the person (the *provider*)  
18 is not limited under section 911B in providing a financial service in  
19 this jurisdiction on behalf of another person who carries on a  
20 financial services business, if the service provided by the provider  
21 is one of the following:
- 22 (a) the provision of a claims handling and settling service;
  - 23 (b) giving advice that consists only of a recommendation or  
24 statement of opinion provided in the course of, and as a  
25 necessary or incidental part of, either or both of:
    - 26 (i) the handling of claims or potential claims in relation to  
27 an insurance product; and
    - 28 (ii) the settlement of claims or potential claims in relation to  
29 an insurance product;
  - 30 (c) dealing in an insurance product, to the extent that the dealing  
31 is a necessary or incidental part of either or both of:
    - 32 (i) the handling of claims or potential claims in relation to  
33 that product; and
    - 34 (ii) the settlement of claims or potential claims in relation to  
35 that product.
-